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CHOI, PETER Y				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/526,004

Applicant(s)

SHELDON ET AL.

Examiner

Peter Y. Choi

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-46 is/are pending in the application.
- 4a) Of the above claim(s) 12-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-11 and 44-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**FINAL ACTION**

***Claim Rejections - 35 USC § 102/103***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 4, 5, 7, 8, 10, 11, 45, and 46 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 6,383,960 to Everett.

Regarding claims 1, 2, 4, 5, 7, 10, and 11 Everett teaches an absorbent core for use in an absorbent article, the core comprising a plurality of substantially continuous and coextensive filaments, at least some of the filaments having disposed on a surface thereof a layer comprising a superabsorbent material formed in place on the surface from a liquid superabsorbent polymer, wherein the core comprises two or more adjacent and coextensive strata, wherein one stratum comprises filaments having disposed on said surface thereof said layer comprising the superabsorbent material, and at least on additional stratum is substantially free of superabsorbent material (see entire document including column 2 lines 29-60, column 3 lines 13-26, column 4 lines 53-67, column 5 line 1 to column 6 line 25, column 7 line 6 to column 8 line 17, column 8

lines 40-56, column 10 lines 11-26, column 10 lines 53-67, column 13 line 59 to column 18 line 37, column 19 line 64 to column 20 line 28, column 20 lines 60-67, column 21 lines 9-31, column 21 line 53 to column 22 line 5, column 22 lines 37-43, column 24 lines 14-65, column 25 lines 15-28, column 26 lines 37-56, column 27 lines 10-21). It should be noted that the absorbent core structure including layers **48** and **50**, and the surge management layer **84**, are equated to the claimed absorbent core.

It should be noted that the limitation requiring the superabsorbent material to be formed in place on the surface from a liquid superabsorbent polymer is a product by process limitation. Absent a showing to the contrary, it is Examiner's position that the article of the applied prior art (an absorbent core comprising two or more coextensive strata having a stratum of superabsorbent material and at least one additional stratum substantially free of superabsorbent material) is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. The burden has been shifted to Applicant to show unobvious difference between the claimed product and the prior art product. The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if Applicant intends to rely on Examples in the specification or in a submitted declaration to show unobviousness, Applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

Regarding claim 2, the filaments are selected from the group consisting of RAYON, cellulose acetate, polypropylene, polyethylene, polyethylene terephthalate, and sheath-core bi-component filaments, and combinations thereof (column 14 lines 5-25).

Regarding claim 4, the surface of at least some of the filaments is hydrophilized (column 14 lines 5-25).

Regarding claim 5, substantially all of the filaments have disposed on the surface thereof the layer comprising the superabsorbent material (column 14 line 49 to column 15 line 16).

Regarding claim 7, the at least one additional stratum comprises a surfactant disposed on the surface of at least some of the filaments (column 14 line 49 to column 15 line 53).

Regarding claims 8, 45 and 46, Everett teaches an absorbent core for use in an absorbent article, the core comprising a plurality of substantially continuous and coextensive filaments, at least some of the filaments having disposed on a surface thereof a layer comprising a superabsorbent material formed in place on the surface from a liquid superabsorbent polymer, wherein the core comprises two or more adjacent and coextensive strata, wherein one stratum comprises filaments having disposed on said surface thereof said layer comprising the superabsorbent material, and at least one additional stratum is substantially free of superabsorbent material, wherein the liquid superabsorbent polymer is selected from the group consisting of one or more superabsorbent polymers at least partially dissolved in a liquid carrier, a solution in a liquid carrier of one or more superabsorbent precursors, and a combination of one or more superabsorbent polymers and superabsorbent precursors (see entire document including column 2 lines 29-60, column 3 lines 13-26, column 4 lines 53-67, column 5 line 1 to column 6 line 25, column 7 line 6 to column 8 line 17, column 8 lines 40-56, column 10 lines 11-26, column 10

Art Unit: 1794

lines 53-67, column 13 line 59 to column 18 line 37, column 19 line 64 to column 20 line 28, column 20 lines 60-67, column 21 lines 9-31, column 21 line 53 to column 22 line 5, column 22 lines 37-43, column 24 lines 14-65, column 25 lines 15-28, column 26 lines 37-56, column 27 lines 10-21). It should be noted that the absorbent core structure including layers **48** and **50**, and the surge management layer **84**, are equated to the claimed absorbent core.

It should be noted that the limitation requiring the superabsorbent material to be formed in place on the surface from a liquid superabsorbent polymer is a product by process limitation. Absent a showing to the contrary, it is Examiner's position that the article of the applied prior art (an absorbent core comprising two or more coextensive strata having a stratum of superabsorbent material and at least one additional stratum substantially free of superabsorbent material) is identical to or only slightly different than the claimed article.

Regarding claim 10, the core further comprises pulp fibers interspersed among at least some of the filaments (column 14 lines 5-25, column 14 lines 39-48, column 19 line 64 to column 20 line 23).

Regarding claim 11, the core further comprises superabsorbent polymer particles interspersed among at least some of the filaments (column 14 line 49 to column 15 line 67, column 17 lines 35-52).

Regarding claim 45, the core further comprises pulp fibers interspersed between at least some of the filaments (column 14 lines 5-25, column 14 lines 39-48, column 19 line 64 to column 20 line 23).

Regarding claim 46, the core further comprises superabsorbent polymer particles interspersed among at least some of the filaments (column 14 line 49 to column 15 line 67, column 17 lines 35-52).

In the event it is shown that Everett does not disclose the claimed invention with sufficient specificity, the invention is obvious because Everett discloses the claimed constituents and discloses that they may be used in combination.

3. Claims 1-5, 7-11 and 44-46 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over US Pub. No. 2002/0013560 to Erspamer.

Regarding claims 1-5, 7 and 9-11 Erspamer teaches an absorbent core for use in an absorbent article, the core comprising a plurality of substantially continuous and coextensive filaments, at least some of the filaments having disposed on a surface thereof a layer comprising a superabsorbent material formed in place on the surface from a liquid superabsorbent polymer, wherein the core comprises two or more adjacent and coextensive strata, wherein one stratum comprises filaments having disposed on said surface thereof said layer comprising the superabsorbent material, and at least on additional stratum is substantially free of superabsorbent material (see entire document including paragraphs 0012-0018, 0045-0047, 0052-0060, 0097, 0098, 0138, Figures 1-3).

It should be noted that the limitation requiring the superabsorbent material to be formed in place on the surface from a liquid superabsorbent polymer is a product by process limitation. Absent a showing to the contrary, it is Examiner's position that the article of the applied prior art (an absorbent core comprising two or more coextensive strata having a stratum of superabsorbent

material and at least one additional stratum substantially free of superabsorbent material) is identical to or only slightly different than the claimed article.

Regarding claim 2, the filaments are selected from the group consisting of RAYON, cellulose acetate, polypropylene, polyethylene, polyethylene terephthalate, and sheath-core bi-component filaments, and combinations thereof (paragraphs 0046, 0052, 0138).

Regarding claim 3, at least some of the filaments comprise cellulose acetate (paragraphs 0046, 0052).

Regarding claim 4, the surface of at least some of the filaments is hydrophilized (paragraph 0052).

Regarding claim 5, substantially all of the filaments have disposed on the surface thereof the layer comprising the superabsorbent material (paragraphs 0046, 0138).

Regarding claim 7, the at least one additional stratum comprises a surfactant disposed on the surface of at least some of the filaments (paragraphs 0046, 0097, 0138).

Regarding claims 8 and 44-46, Erspamer teaches an absorbent core for use in an absorbent article, the core comprising a plurality of substantially continuous and coextensive filaments, at least some of the filaments having disposed on a surface thereof a layer comprising a superabsorbent material formed in place on the surface from a liquid superabsorbent polymer, wherein the core comprises two or more adjacent and coextensive strata, wherein one stratum comprises filaments having disposed on said surface thereof said layer comprising the superabsorbent material, and at least one additional stratum is substantially free of superabsorbent material, wherein the liquid superabsorbent polymer is selected from the group consisting of one or more superabsorbent polymers at least partially dissolved in a liquid carrier, a solution in a



liquid carrier of one or more superabsorbent precursors, and a combination of one or more superabsorbent polymers and superabsorbent precursors (see entire document including paragraphs 0012-0018, 0045-0047, 0052-0060, 0097, 0098, 0138, Figures 1-3).

It should be noted that the limitation requiring the superabsorbent material to be formed in place on the surface from a liquid superabsorbent polymer is a product by process limitation. Absent a showing to the contrary, it is Examiner's position that the article of the applied prior art (an absorbent core comprising two or more coextensive strata having a stratum of superabsorbent material and at least one additional stratum substantially free of superabsorbent material) is identical to or only slightly different than the claimed article.

Regarding claim 9, the core has two opposing sides and the superabsorbent material is disposed in a pattern on one or both of the opposing sides (paragraphs 0046, 0138).

Regarding claim 10, the core further comprises pulp fibers interspersed among at least some of the filaments (paragraphs 0046, 0052).

Regarding claim 11, the core further comprises superabsorbent polymer particles interspersed among at least some of the filaments (paragraphs 0046, 0058-0060).

Regarding claim 44, the core has two opposing sides and the superabsorbent material is disposed in a pattern on one or both of the opposing sides (paragraphs 0046, 0138).

Regarding claim 45, the core further comprises pulp fibers interspersed between at least some of the filaments (paragraphs 0046, 0052).

Regarding claim 46, the core further comprises superabsorbent polymer particles interspersed among at least some of the filaments (paragraphs 0046, 0058-0060).

In the event it is shown that Erspamer does not disclose the claimed invention with sufficient specificity, the invention is obvious because Erspamer discloses the claimed constituents and discloses that they may be used in combination.

***Claim Rejections - 35 USC § 103***

4. Claims 9 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Everett, as applied to claims 1, 2, 4, 5, 7, 8, 10, 11, 45, and 46, in view of US Pub. No. 2002/0002209 to Mork.

Regarding claims 9 and 44, Everett teaches that the core has two opposing sides (column 5 line 1 to column 6 line 25, Figure 1A). Everett does not appear to teach that the superabsorbent material is disposed in a pattern on one or both of the opposing sides, but Everett does teach that the superabsorbent particles may be arranged in a discrete layer within the fibers or selectively positioned at different locations within or along the fiber matrix (column 14 line 49 to column 15 line 16). However, Mork teaches a similar absorbent substrate wherein a superabsorbent material is uniformly coated or patterned on the absorbent substrate (Mork, paragraphs 0002, 0057, 0058). Mork teaches the advantages of pattern coating the superabsorbent such that the fluid can be stored in targeted locations of a diaper, and that designs, logos, or pictures can be patterned into and/or onto the substrate such that when the article is wet the design, logo, or picture will swell and become apparent. It would have been obvious to one of ordinary skill in the absorbent article art to form the absorbent core of Everett, wherein the superabsorbent material is pattern coated on the absorbent core, as taught by Mork, motivated by the desire of forming a conventional absorbent core which can direct fluid to

targeted locations of the diaper and which can be designed to indicate when the article is wet from the swelling of the pattern.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Everett, as applied to claims 1, 2, 4, 5, 7, 8, 10, 11, 45, and 46, in view of Erspamer.

Regarding claim 3, Everett does not appear to teach that at least some of the filaments comprise cellulose acetate. However, Everett does teach that the fibers may be cellulosic fibers or synthetic fibers composed of cellulose or cellulosic derivatives (Everett, column 14 lines 5-25). Erspamer teaches a substantially similar absorbent core comprising cellulosic fibers including cellulosic fibers that have been chemically modified such as cellulose acetate (paragraphs 0046, 0052). It would have been obvious to one of ordinary skill in the absorbent article art to form the absorbent core of Everett, wherein the cellulosic fibers are cellulose acetate, as taught by Erspamer, motivated by the desire of forming a conventional absorbent core from cellulose materials and as Erspamer teaches that cellulose fibers and cellulose acetate are functionally equivalent and interchangeable fibers when used in an absorbent core in the absorbent article art.

#### ***Response to Arguments***

6. Applicants' arguments with respect to claims 1-5, 7-11 and 44-46 have been considered but are moot in view of the new grounds of rejection.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Y. Choi whose telephone number is (571) 272-6730. The examiner can normally be reached on Monday - Friday, 08:00 - 15:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew T Piziali/  
Primary Examiner, Art Unit 1794

/Peter Y. Choi/  
Examiner, Art Unit 1794  
October 2, 2007